

# Exhibit 11

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NEUROGRAFIX, a California )  
corporation; WASHINGTON )  
RESEARCH FOUNDATION, a )  
not-for-profit Washington )  
corporation, )

Plaintiffs, )

vs. )

SIEMENS MEDICAL SOLUTIONS )  
USA, INC., a Delaware )  
corporation and SIEMENS )  
AKTIENGESELLSCHAFT, a )  
German corporation, )

Defendants. )

AND RELATED CROSS-ACTION. )

No. CV 10-1990  
(MRP) (RZX)

VIDEOTAPED DEPOSITION OF  
MICHAEL BRANT-ZAWADZKI, M.D.

Los Angeles, California

Tuesday, August 16, 2011

Reported By:

LISA MOSKOWITZ, CSR 10816, RPR, CLR

Job No. 41126

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August 16, 2011

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9:55 a.m.

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Videotaped Deposition of MICHAEL

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BRANT-ZAWADZKI, M.D., held at the offices of

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Russ, August & Kabat, 12424 Wilshire Boulevard,

12

12th Floor, Los Angeles, California, pursuant

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to Notice before Lisa Moskowitz, Certified

14

Shorthand Reporter and Registered Professional

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Reporter of the State of California.

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1 A P P E A R A N C E S:

2 RUSS AUGUST & KABAT

3 Attorney for the Plaintiffs

4 12424 Wilshire Boulevard

5 Los Angeles, CA 90025

6

7 BY: MARC A. FENSTER, ESQ.

8 FREDRICKA UNG, ESQ.

9 ANDREW D. WEISS, ESQ.

10

11 KIRKLAND & ELLIS

12 Attorneys for the Defendants

13 655 Fifteenth Street, N.W.

14 Washington, D.C. 20005

15

16 BY: GREGG F. LoCASCIO, ESQ.

17 CHRISTOPHER R. NALEVANKO, ESQ.

18

19 ALSO PRESENT:

20 COURTNEY BATES, Videographer

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1 THE VIDEOGRAPHER: This marks the 09:35  
2 start of disk No. 1 in the videotaped  
3 deposition of Michael Brant-Zawadzki in  
4 the matter of NeuroGrafix versus  
5 Siemens, et al., in the Central District 09:54  
6 Court of California, Western Division,  
7 Case No. CV 10-1990 (MRP) (RZX). This  
8 deposition is being held today at  
9 12424 Wilshire Boulevard on the 12th  
10 floor in Los Angeles, California on 09:54  
11 August 16, 2011, at approximately  
12 9:55 a.m. My name is Courtney Bates,  
13 and I'm here from TSG Reporting, Inc.  
14 I'm the legal video specialist, and I'm  
15 here with our court reporter, Lisa 09:55  
16 Moskowitz, in association with TSG  
17 Reporting.

18 At this time will counsel please  
19 give your appearances for the record.

20 MR. LoCASCIO: Sure. Gregg 09:55  
21 LoCascio and Chris Nalevanko on behalf  
22 of the defendants Siemens.

23 MR. FENSTER: Marc Fenster along  
24 with Fredricka Ung and Andrew Weiss on  
25 behalf of plaintiff NeuroGrafix and the 09:55

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1 witness. 09:55

2 THE VIDEOGRAPHER: Thank you. And  
3 the reporter may now swear or affirm the  
4 witness.

5 M I C H A E L B R A N T - Z A W A D Z K I, M. D. 09:55

6 called as a witness, having been duly  
7 sworn, was examined and testified as  
8 follows:

9 EXAMINATION

10 BY MR. LoCASCIO: 09:55

11 Q. Good morning, sir.

12 A. Morning.

13 Q. Can you pronounce your name just so I  
14 make sure I get it right.

15 A. Michael Brant-Zawadzki. 09:55

16 Q. Brant-Zawadzki?

17 A. Correct.

18 Q. You're a doctor; correct?

19 A. I am a doctor.

20 Q. Dr. Brant-Zawadzki, you have been 09:55

21 hired by NeuroGrafix to provide expert  
22 testimony in this matter; correct?

23 A. Yes.

24 Q. And how much are you being paid an  
25 hour for your testimony? 09:56

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1           A.    To specifically control a           13:14  
2           off-the-shelf instrument in such a way as to  
3           select out nerve tissue specifically. I want  
4           to see -- my main focus here is the peripheral  
5           nerve. This is what I -- this is what I want   13:14  
6           to see. So I don't think -- so that's the  
7           part, the controlling the performance of  
8           those -- that's A, B, and C which we do all the  
9           time. For that specific purpose I don't think  
10          that's something that I do normally.           13:15

11          Q.    Are you interpreting into 3D the  
12          requirement that the physician have an intent  
13          to do that? Are you putting some mental state  
14          component into your reading of 3D?

15          A.    Well, mental state and directing the   13:15  
16          instrument to do something that it doesn't  
17          ordinarily do. So I don't know if it's mental  
18          state and telepathy or just a mental state.  
19          But it's the intent; right? It's the control  
20          and controlling and changing the parameters of   13:15  
21          the instrument to -- for the specific purpose.  
22          I don't think that I do that routinely.

23          Q.    3D, sir, where it says -- do you see  
24          where it says, "Said step of controlling, the  
25          performance of steps A, B and C including"? Do 13:15

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1 you see that? 13:15

2 A. I see "controlling." And is there  
3 another "controlling"?

4 Q. Yeah. It says, "Controlling the  
5 performance of ABC to enhance" -- 13:16

6 A. "Said step of controlling the  
7 performance of steps AB and C including."

8 Q. Yes. And there's language following  
9 the word "including." Do you see that? All  
10 the way to the word "tissue" which is the end 13:16  
11 of 3D, "selecting the combination."

12 Do you see that?

13 A. Yes, I do.

14 Q. That section of 3D is a T2-weighted  
15 sequence; correct? 13:16

16 A. No. You know, because it's more than  
17 that; right? So it's kind of -- in the pure  
18 physics sense of MR, it is not clear that --  
19 what is meant there. I think what I inferred  
20 from that is that where in said spin-spin 13:16  
21 relaxation time is substantially longer than  
22 that, what you're doing there is to say,  
23 listen, I'm going to make the signal intensity  
24 of the nerve brighter than the surrounding  
25 tissue. You can't control the T2. You can't 13:17



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1 control spin-spin relaxation. You can't make 13:17  
2 the nerve longer than it is inherently.

3 So the wording there is such that my  
4 interpretation of the wording is I'm  
5 controlling the environment such that the T2 13:17  
6 relaxation time of the nerve stands out, right,  
7 compared to other tissues.

8 Q. Sir, it says, "Controlling the  
9 performance of the three steps above," and  
10 those include exposing the in vivo region to a 13:17  
11 field, exposing it to a magnetic polarizing  
12 field, excitation field, and sensing the  
13 response; correct?

14 A. Yes.

15 Q. That's what you're controlling. It 13:17  
16 doesn't say controlling the tissue, sir.

17 MR. FENSTER: Objection.

18 Argumentative.

19 BY MR. LoCASCIO:

20 Q. Does it? Is that your reading? Are 13:18  
21 you reading it that way?

22 A. I'm reading it -- to me the way I  
23 interpret D is you're controlling the  
24 instrument in such a way with all the  
25 parameters that you have on hand; right? 13:18

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1 Q. And it is the language that is after 13:22  
2 the word "selecting," and it goes all the way  
3 to the end of 3D; right?

4 A. You mean the language under 10?

5 Q. Yes, on the stipulated claim 13:22  
6 construction statement.

7 A. And the other surrounding tissue. It  
8 excludes the "and" but yes for practical  
9 purposes.

10 Q. And on the right side there's an 13:22  
11 agreed construction by the parties, and it  
12 says, "A combination of echo time and  
13 repetition time that is designed to take  
14 advantage of the differences in T2 values in  
15 the nerve comparative surrounding tissue. This 13:22  
16 is commonly referred to as a T2-weighted  
17 sequence."

18 Do you see that?

19 A. Yes.

20 Q. The parties have agreed that that 13:22  
21 language is what's commonly referred to as a  
22 T2-weighted sequence. That's that it says;  
23 correct?

24 A. Uh-huh.

25 Q. That's a "yes," sir? 13:23

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1           A.    I'm just agreeing to what the words   13:23  
2           in that paragraph are.

3           Q.    And this is the stipulated claim  
4           construction that you've never seen until  
5           today; correct?                               13:23

6           A.    I don't know that I've never seen it.  
7           I was given a stack of documents this big; so I  
8           can't remember everything I've seen as I sit  
9           here. I don't know if I've seen this before or  
10          not.   13:23

11          Q.    Did you try to you make sure the list  
12          of documents considered was accurate, or was it  
13          just sort of thrown together?

14          A.    The list of documents this big,  
15          whether each and every portion of it was       13:23  
16          accurate? Is that what you're asking?

17          Q.    Sir, your expert report, the back of  
18          Exhibit 36, you provided a list called  
19          "Materials Considered."

20                Do you see that?                       13:23

21          A.    Yes.

22          Q.    And it has a list of things you  
23          considered. Was this considered or not, sir,  
24          Exhibit 37?

25          A.    This item right here?               13:23

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1 Q. Uh-huh. 13:23

2 A. Is it on the list?

3 Q. It's not.

4 A. Then I guess I didn't.

5 MR. FENSTER: Gregg, just for the 13:24

6 record, it seems to be your position

7 that this stipulation at page 15 of

8 document 99-1 somehow eliminates or

9 renders meaningless the language of the

10 claim that requires that the spin-spin 13:24

11 relaxation coefficient of nerve be

12 substantially longer than the

13 surrounding tissue. If that's your

14 interpretation of our stipulation, I

15 disagree. 13:24

16 MR. LoCASCIO: I agree that now

17 you've changed your position. We can

18 disagree as to whether it's new or it's

19 always been that way.

20 MR. FENSTER: It's never been our 13:24

21 position, and I think your

22 interpretation of that is absurd.

23 BY MR. LoCASCIO:

24 Q. Sir, do you see where it says --

25 let's back up. 3D, sir -- 13:25

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1 A. Back to -- 13:25

2 Q. Back to claim 3.

3 A. Yes.

4 Q. Let me withdraw that, sir.

5 3E. Have you ever processed the 13:25

6 output of a scan to generate a data set  
7 describing the shape and position of a nerve?  
8 Start with that.

9 A. No, I don't think I ever have.

10 Q. You provided a declaration in this 13:25  
11 case in addition to your two expert reports;  
12 correct?

13 A. Yes.

14 Q. Did you write that, or did the  
15 lawyers write that for you? 13:25

16 A. Again, same answer as before. There  
17 was a draft that I reviewed, edited  
18 considerably.

19 Q. I'll give you what we've marked as  
20 Defendants' Exhibit No. 38. It's a copy of 13:26  
21 your declaration.

22 (Defendants' Exhibit 38 was marked  
23 for identification.)

24 BY MR. LoCASCIO:

25 Q. You understood the reason for 13:26

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1                   We were talking earlier about the                   13:35  
2                   spinal cord. So you said, "Oh, no, that's  
3                   central nervous system." Well, guess where the  
4                   spinal cord gives rise to peripheral nerves?  
5                   So the same argument you can use, gee, it shows 13:35  
6                   the spinal cord. Isn't that a peripheral  
7                   nerve? Well, no, because by definition it's  
8                   the central nervous system, but it really is  
9                   composed of a lot of nerves that become  
10                  peripheral at some point. So when does it                   13:35  
11                  become central? When is it central? When is  
12                  it peripheral?

13                  By definition peripheral nerves are,  
14                  to me, outside the cranium and outside the  
15                  spine. And just because the fifth nerve has an 13:35  
16                  extra cranial component doesn't mean that when  
17                  it's in the intracranial space it's defined or  
18                  demonstrated on an image that talks about  
19                  intracranial structures, and, therefore, this  
20                  previous article described the art. It didn't. 13:35

21                  Q. Your opinion is premised on only  
22                  looking at the portion of cranial nerve 5  
23                  that's outside the arachnoid space; correct?

24                  MR. FENSTER: Objection. Vague,  
25                  misstates prior testimony and the                               13:36

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1 report. 13:36

2 THE WITNESS: My opinion -- I don't  
3 think that was my opinion. My opinion  
4 is the difference between the  
5 application of this patent. To me this 13:36  
6 patent is applied outside of the cranial  
7 space and outside of the spine, spinal  
8 canal.

9 BY MR. LoCASCIO:

10 Q. So your interpretation of cranial 13:36  
11 nerves Nos. 3 through 12 is the portion of  
12 those nerves outside of the cranial space?

13 A. Outside of the subarachnoid space,  
14 yes. I mean that's how I understand this  
15 patent. I may be wrong in that understanding. 13:36  
16 That's my concept of this.

17 And what Hajnal describes is one  
18 component of how neural tissue can be  
19 differentiated -- a significant component, that  
20 of diffusion-weighted imaging, not even 13:36  
21 T2-weighted imaging, diffusion-weighted imaging  
22 in terms of being a component of the  
23 constellation of things that subsequently were  
24 created into this technology. Not created but  
25 amassed or collated into this technology. It's 13:37

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1 a component. 13:37

2 Q. Because Filler and the other  
3 inventors didn't come up with any of these  
4 techniques; right?

5 MR. FENSTER: Objection. Vague, 13:37  
6 argumentative.

7 THE WITNESS: They didn't come up  
8 with a fat suppression sequence or a  
9 diffusion-weighted sequence anymore than  
10 the maker of the ATM machine came up 13:37  
11 with screen technology or push button  
12 technology. But I understand there's a  
13 patent for the ATM machine.

14 So I'm not a patent attorney. I'm  
15 sorry my knowledge of it is limited. 13:37  
16 I'm just giving you my -- in my limited  
17 opinion I don't think Hajnal, from what  
18 I know, is a demonstration of  
19 pre-existing art that would overturn  
20 this patent. 13:37

21 BY MR. LoCASCIO:

22 Q. Your opinion --

23 A. Again, this opinion is also based --  
24 I mentioned to you that I'm in a company that  
25 is having discussion of a patent, a portion of 13:38



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1 a derivative of the central point, as I 13:41  
2 read my language, derivative of the fact  
3 that claim language reflects the nerve  
4 must have a T2 decay time substantially  
5 longer than the tissue around it. That 13:41  
6 is not the case in the intracranial  
7 space from the spinal canal where  
8 surrounding tissue, spinal fluid, the  
9 longest T2 there is.

10 BY MR. LoCASCIO: 13:41

11 Q. What are you looking at now?

12 A. I'm looking page 2 in the middle of  
13 paragraph 8.

14 Q. And this is -- you just said "my  
15 language." This is the language the lawyers 13:41  
16 wrote for you?

17 A. No, that is actually language that I  
18 changed for the lawyers. I remember  
19 specifically editing this language.

20 Q. From what to what? 13:42

21 A. I don't remember what it was, but we  
22 had it -- it seemed to me the lawyers did not  
23 have a clear understanding of the intrinsic  
24 nature of T2 and what that meant. Okay? So I  
25 don't remember what the original language was. 13:42

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1 I can just tell you that I remember doing some 13:42  
2 editing of this particular language.

3 Q. So your opinion, sir, as set forth  
4 here in your declaration, requires the analysis  
5 of the T2 decay time of the surrounding tissue 13:42  
6 to determine whether or not the claim  
7 limitations are met? That's what you read 3D  
8 as requiring?

9 A. Well, it's --

10 Q. Because you look at the specific 13:42  
11 surrounding tissue being CSF, and you look at  
12 T2 decay, and that's what you're doing here;  
13 correct?

14 A. I'm saying that Hajnal does not fit  
15 the claim language because it shows nerves 13:42  
16 surrounded by tissue, fluid, that has a  
17 substantially longer T2 time.

18 Q. Because it's in the subarachnoid  
19 space?

20 A. By definition, yes. The subarachnoid 13:43  
21 space is the space within which the spinal  
22 fluid lives.

23 Q. Did you know before you put your  
24 report together -- did anybody tell you that  
25 NeuroGrafix argued that cranial nerves should 13:43

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1 be limited to only the portion outside the 13:43  
2 subarachnoid space, and the court said, "No,  
3 that's wrong"? Do you know that?

4 A. As I sit here right now, no, I don't  
5 know that. 13:43

6 MR. LoCASCIO: Let's take a break.

7 THE VIDEOGRAPHER: The time is  
8 1:43 p.m., and we're off the record.

9 (Recess taken from 1:43 p.m. to  
10 1:52 p.m.) 13:52

11 THE VIDEOGRAPHER: The time is  
12 1:52 p.m., and we are back on the  
13 record.

14 BY MR. LoCASCIO:

15 Q. Sir, before the break we had talked 13:52  
16 previously about Dr. Bryan's view that the ROI  
17 definition has a direct influence on  
18 quantitative outcomes.

19 Do you remember that?

20 A. Yes. 13:53

21 Q. You understand that there are various  
22 references in the literature where it is  
23 discussed specifically that the method of ROI  
24 definition has a direct influence on  
25 quantitative outcome for MR. Fair? 13:53

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1           A.    Yes.  It's an internally consistent   13:53  
2           statement.  ROI implies quantitative.

3           Q.    And the 360 patent requires a  
4           quantitative calculation to determine whether  
5           or not you infringe; correct?           13:53

6           A.    Again, the phrase "quantitative  
7           calculation" is a redundancy.  Anything that is  
8           a calculation is quantitative.

9           Q.    My question, then, sir, is the 360  
10          patent requires a quantitative assessment or   13:53  
11          calculation to actually determine if there is  
12          infringement; right?

13          A.    I don't know if -- again, I'm not an  
14          attorney enough to know if the word "requires"  
15          is correct.  I know the component of           13:54  
16          infringement is an ROI calculation, a component  
17          of the infringement.  Whether the patent  
18          requires it or not, I would leave to an  
19          attorney's interpretation.

20          Q.    As one of skill in the art, sir, when 13:54  
21          you read claim 3, if you want to know whether  
22          you're practicing it or not --

23          A.    That's one way of knowing whether I'm  
24          practicing it or not is by doing the  
25          calculation.                               13:54

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1 THE VIDEOGRAPHER: This marks the 15:36  
2 end of disk No. 3 and is the end of  
3 today's deposition. The time is  
4 3:36 p.m. We're now off the record.

5 (Time noted: 3:36 p.m.) 17:37

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MICHAEL BRANT-ZAWADZKI, M.D.

15

16

Subscribed and sworn to before me

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this day of , 2011.

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(Notary Public)

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My Commission expires: \_\_\_\_\_

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